

**SOP Title: Workplace Disputes****August 26, 2008****Deputy Area/Division: Civil Rights Division****Revision:****Page 1 of 6****1. Purpose:**

To provide the Standard Operating Procedure (SOP) for requesting Alternative Dispute Resolution (ADR) services administered the Civil Rights Division (CRD), Complaints Branch.

**2. Scope:**

This SOP will be followed by all persons seeking resolution of workplace or program conflict using ADR techniques.

**3. Outline of Procedure:**

- 4.1 Explanation of ADR Terms
- 4.2 Requesting Mediation
- 4.3 Requesting ADR Training

**4. Specific Procedures:****4.1 Explanation of ADR Terms**

- A. **Alternative Dispute Resolution (ADR)** – A term used to describe a variety of approaches to resolving conflict rather than traditional adjudicatory methods or adversarial methods. Examples of traditional adjudicatory methods include litigation, hearings, and agency administrative grievance processing and appeals.
- B. **Conflict** – Any disagreement, discord, argument, complaint, or legal action, as well as the circumstances leading up to it.
- C. **Conflict Management** – The process of identifying disputes at the early stages of development, identifies potential interest groups, educates them about issue(s), and attempts to develop cooperative responses to future problems, thus avoiding or decreasing the destructive effects of conflict in a mutually acceptable manner for all participants.
- D. **Confidentiality** – Means that a neutral “shall not voluntarily disclose or through discovery or compulsory process be required to disclose any dispute resolution communication or any communication provided in confidence to the neutral”. While parties also have an obligation of confidentiality, it is less than that of a neutral. Unless the parties and the neutral agree otherwise, the parties may disclose their own communications as well as statements made by other parties while in joint session (*i.e.*, when all the parties are present).
- E. **Consultation** – Refers to contact with a person involved in a dispute seeking information or help with problem solving from the ADR team.

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- F. **Customer** – Refers to individuals, organizations, or businesses external to USDA that provides services to or receives services from USDA or that have contact with any USDA office or employee.
- G. **Early Intervention** – An attempt to resolve a conflict at the earliest possible stage outside of the traditional formal complaint processes (e.g., EEO, Administrative Grievance, etc.).
- H. **Equal Employment Opportunity (EEO)** – Involves the right of persons to apply and be evaluated for employment opportunities or participate in federal government sanctioned programs without regard race, color, national origin, sex, religion, age (40+), disability, retaliation (for prior participation in the equal employment opportunity complaint process), sexual orientation, marital or family status, political beliefs, parental status, and/or protected genetic information.
- I. **Facilitation** – Involves the use of techniques to improve the flow of information in a meeting between parties to a dispute. The facilitator focuses on procedural assistance and remains impartial to the topics under discussion.
- J. **Grievance** – A request through the Administrative Grievance process by an employee for personal relief in a matter of concern or dissatisfaction.
- K. **Mediation** – The intervention in a dispute or negotiation of an acceptable, impartial and neutral third party, who has no decision-making authority. The objective of this intervention is to assist the parties to voluntarily reach an acceptable resolution of the issues in dispute.
- L. **Mediator** – A person who serves as an impartial facilitator (neutral third party) between participants who are experiencing conflict in an attempt to assist them in resolving a dispute. The mediator does not take sides or render decisions on the merits of the dispute. A mediator provides guidance to the participants on enhancing conflict management skills, assists them in identifying areas of agreement and encourages them to explore potential options toward resolution.
- M. **Neutral** – "An individual who, with respect to an issue in controversy, functions specifically to aid the parties in resolving the controversy by conducting, leading or facilitating an ADR session. Neutrals include mediators, facilitators, and arbitrators. NRCS utilizes in-house mediators (ADR Specialists), collateral-duty mediators; other agency USDA trained mediators and contract mediators.
- N. **Parties** – Refer to the agencies, employees, managers, or customers who are in conflict and participate in an ADR process with the goal of reaching a mutually agreeable resolution. In the Early Intervention process employees in mediation are referred to as Parties. Party 1 is the employee who requests mediation. Party 2 is the employee with whom Party 1 is requesting to participate with in mediation.
- O. **Resolution** – A mutual collaborated decision reached by the parties that result in the total closure of a conflict, complaint, grievance, appeal, or litigation.
- P. **Resolving Official (RO)** – In an EEO complaint is the management officials authorized by the agency to make changes, accept, and approve proposals for resolution during an ADR session.
- Q. **Responsible Management Official (RMO)** – An EEO complaint is the supervisor, or other designated management official, who according to the complainant's allegations, is responsible for the action or made the decision that allegedly harmed the Complainant. The RMO is sometimes identified as the "Responding Management Official."
- R. **Program Disputes** – Involve customers who file a complaint based on their receipt of an adverse decision.

- S. **Training** – Refers to a variety of sessions or briefings designed to provide participants more effective and efficient conflict management and communication skills.

#### 4.2 Requesting ADR Services

**Early Intervention ADR** – An NRCS employee contacts the CRD to request ADR services. The case is then assigned to an ADR Specialist for Case Management or as the Mediator.

A. Responsibilities of the Requesting Party:

Contact the CRD at 5601 Sunnyside Avenue, Beltsville, Maryland 20705-5472 or on (301) 504-2181.

B. Responsibilities of the ADR Specialist:

- (1) Conduct intake process with requesting Party 1.
- (2) Explain ADR options, timeframes, confidentiality, neutrality, enforceability, the right to have representation, and other types of dispute resolution.
- (3) Contact Party 2 to see if they are willing to mediate.
- (4) Discuss schedules with both parties to determine possible dates for mediation.
- (5) Conduct the mediation or select a mediator and neutral location.
- (6) Provide the documents: Understanding the Mediation Process; the Agreement to Mediate; the Settlement Agreement template; the No Settlement Agreement template; and the Mediator/Mediation Evaluations to all parties, including representatives, if applicable.
- (7) In situations where there are expenses for travel, per-diem, or a contract mediator, those expenses are incurred by the State Office or entity (e.g., functional area) of the requesting Party. Contact the appropriate approving authority to coordinate the financial obligations associated with the mediation.

**EEO Informal/Pre-Complaint:** The Complainant elects ADR for resolution in lieu of traditional counseling. The CRD then assigns the complaint to an ADR Specialist as the Case Manager or the Mediator.

A. Responsibilities of the Complainant:

Mediation is initiated through the Civil Rights Division; the Complainant has up to 5 calendar days to sign an ADR election form and return the completed form to the EEO Counselor.

B. Responsibilities of the ADR Specialist:

- (1) Contact the Complainant.
- (2) Explain ADR options, timeframes, confidentiality, neutrality, enforceability, and the right to have representation.
- (3) Contact the alleged RMO and the RO. If a Complainant elects ADR then management is required to participate. Exceptions to this requirement are reviewed on a case-by-case basis by the CRD.
- (4) Discuss schedules with all parties to determine possible dates for mediation.

- (5) Conduct the mediation or select a mediator and neutral location.
- (6) Provide the documents – Understanding the Mediation Process; the Agreement to Mediate; the Settlement Agreement template; the No Settlement Agreement template; and the Mediator/Mediation Evaluations to all parties, including representatives, if applicable.

**EEO Formal Complaint:** The CRD receives a formal request from the Complainant for ADR. The CRD then assigns the case to an ADR Specialist as the Case Manager or the Mediator.

A. Responsibilities of the Complainant:

Upon receipt of the Report of Investigation (ROI) from the CRD, complete the ADR Election Form and return to the CRD within 30 calendar days from the date of receipt.

B. Responsibilities of the ADR Specialist:

- (1) Contact the Complainant.
- (2) Explain ADR options, timeframes, confidentiality, neutrality, the right to have representation, and enforceability.
- (3) Contact alleged RMO and RO. If a Complainant elects ADR then management is required to participate. Exceptions to this requirement are reviewed on a case-by-case basis by the CRD.
- (4) Discuss schedules with all parties to determine possible dates for mediation.
- (5) Conduct the mediation or select a mediator and neutral location.
- (6) Provide the documents – Understanding the Mediation Process; the Agreement to Mediate; the Settlement Agreement template; the No Settlement Agreement template; and the Mediator/Mediation Evaluations to all parties, including representatives, if applicable.

**Grievance (Administrative)** – In this process the CRD receives a referral from the Human Resources Management Division, Employee Relations Branch wherein the Grievant has elected ADR within the Administrative Grievance process. The CRD then assigns the case to an ADR Specialist as the Case Manager or the Mediator.

A. Responsibilities of the ADR Specialist:

1. Conduct intake process with the Grievant.
2. Explain ADR options, timeframes, confidentiality, neutrality, enforceability, the right to have representation, and other types of dispute resolution.
3. Contact Party 2 to see if they are willing to mediate.
4. Discuss schedules with both parties to determine possible dates for mediation.
5. Conduct the mediation or select a mediator and neutral location.
6. Provide the documents: Understanding the Mediation Process; the Agreement to Mediate; the Settlement Agreement template; the No Settlement Agreement template; and the Mediator/Mediation Evaluations to all parties, including representatives, if applicable.
7. In situations where there are expenses for travel, per-diem, or a contract mediator, those

expenses are incurred by the State Office or entity (e.g., functional area) of the requesting Party. Contact the appropriate approving authority to coordinate the financial obligations associated with the mediation.

**EEO Program Complaint** – In this process the CRD receives a request from the Program Customer. The Complaint is assigned to an ADR Specialist as the Case Manager.

A. Responsibilities of the Customer

Mediation is conducted in States that have a USDA-certified State Agricultural Mediation Program when a Program customer has received an adverse decision relating to participation in a USDA sanctioned conservation program. States that are not certified may contact the Civil Rights Division, Complaints Branch for assistance in obtaining a Mediator.

B. Responsibilities of the ADR Specialist

1. Advise all customers, to whom an adverse program decision has been issued, that mediation is an option in all States where there USDA sanctioned Agricultural Programs. States that have a USDA-certified State Agricultural Mediation Program will follow those procedures. All other non USDA-certified states will be referred to a certified Mediator.
2. Explain confidentiality, neutrality, enforceability, and the right to have representation.
3. Explain to the requesting customer that ADR is voluntary.

4.3 Requesting ADR Training

The Civil Rights Division provides a variety of training sessions and briefings for employees at all levels, including supervisors and managers. Training may be requested by NRCS or USDA employees through the appropriate channels within the State or by contacting the CRD.

1. **Conflict Management Training (CMT)** – An interactive training designed to provide the tools or enhance the participant's skills and ability to help them achieve more effective and efficient conflict management.
2. **Effective Communication Training** – Designed to enhance your ability to communicate more effectively with employees and customers.
3. **ADR Awareness Briefing** – Designed to create awareness and promote usage of Alternative Dispute Resolution (ADR).

**5. Technical Contact:**

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